

REMARKS

Claims 34-39 are currently pending in the current application. Each of claims 34-39 stand rejected by the April 21, 2009 Office Action. Claims 34-39 are amended by the present response. Claims 34-36 are independent claims, and claims 37-39 depend, either directly or indirectly, from claim 36. Applicants respectfully request reconsideration of the Application, in light of the following remarks.

Rejection of Claims 34, 36, and 38 under 35 U.S.C. §112

Claim 34 stands rejected under 35 U.S.C. 112, as failing to comply with the written description requirement. Explaining this rejection, the Office Action states as follows:

Claim 34 recites providing a portal containing a plurality of promotions wherein a buyer can search for a promotion from the first party associated with the item for sale *after the offering by a second system of a second party*. The specification however discloses (see fig. 6-9 and related paragraphs) a seller offering an item for sell and a rebate, a coupon or promotion amount is associated with the item and a purchase request from a buyer for the item being offered online is received and a buyer is require to pay a purchase amount corresponding to the sales price amount less the rebate, coupon or promotion amount for item. Also on pages 44-50, the specification teaches a first party offers an item online for sale at a sale price; a coupon of the second party is associated with the item; a purchase request is received from a buyer for the item being offered online and the purchase request is responded to by requiring the buyer to pay a purchase amount corresponding to the sales price amount less the coupon amount for the item.

The specification does not provide support for providing the portal after the offering by a second system of a second party or the buyer can search for promotion from the first party after the offering by the second system of a second party.

(Office Action at p. 2-3; italics in original.) Applicants respectfully traverse this assertion. First, for example, the flowcharts of Figs. 6-9 and related text show the association of the coupon or promotion amount in a step of the flowchart following the step of, for instance, offering one or more items for sale. Thus, the figures and related text clearly support an association taking place **after** the offering for sale. Further still, other aspects of the specification provide further support for the providing of a portal containing a plurality of promotions wherein a buyer can search for a promotion from the first party associated with the item for sale after the offering by a second system

of a second party. For example, the Specification states at p. 15, lines 16-18, “In addition, if any items in the shopping cart are not specific enough to unambiguously identify a manufacturer, the system 15 returns coupons for multiple manufacturers of similar products for the customer to choose from.” Because such coupons from which a customer can select are provided after items are in a shopping cart, such providing of coupons from which a customer can select must necessarily come after an offering for sale. For at least the reasons given above, as well as in previous submissions, Applicants respectfully submit that the Specification provides sufficient support for providing a portal containing a plurality of promotions wherein a buyer can search for a promotion from the first party associated with the item for sale after the offering by a second system of a second party.

Claim 34 also stands rejected under 35 U.S.C. 112, as the Office Action asserts that “[i]t is unclear if the portal is provided after the offering by the second party or the user can search after the offering by the second party.” (See Office Action at p. 3.) While Applicants respectfully traverse this rejection, claim 34 is amended by the present response to make even more explicit that the portal is provided after the offering by the second party. Namely, claim 34 is amended to recite, *inter alia*, “wherein the portal is provided after the offering by a second system of a second party of the item for sale online at the sales price...” Applicants respectfully submit that claim 34 is allowable under 35 U.S.C. 112.

Claim 38 also stands rejected under 35 U.S.C. 112. Explaining this rejection, the Office Action states as follows:

Claim 38 now recites wherein the transaction fee is collected from the buyer by charging ***an amount more than the sale price less the promotional amount***. Claim 36 recites responding to the only purchase by collecting *from the buyer to a sales price amount less the promotion amount* and also *collecting a transaction fee*. As claimed in claim 36 the transaction fee is in addition to the purchase amount (sales amount minus the promotion amount) and the transaction fee as claimed in claim 38 is an amount more than the purchase amount. Therefore, two different amounts are collected from the buyer; a purchase amount (a sale price minus a promotion amount) and a transaction fee (an amount that is more than the purchase amount). As understood by the examiner, for example, if the sale amount is \$2.00 and the promotion amount 0.50 cents, the buyer is charged \$1.50 as a purchase amount and also an amount more than \$1.50 as transaction fee, i.e., a total amount which exceeds \$3.00.

Therefore it is unclear if Applicant intended to claim that the total purchase amount, which includes the transaction fee, is more than the sale price less the promotion amount or the transaction fee by itself is more than the sales price less the promotion (more than the purchase amount).

Claim 38 recites the limitation “promotional amount”. There is insufficient antecedent basis for this limitation in the claim. Claim 36 recites a “promotion amount” not a “promotional amount”.

(Office Action at p. 3-4; emphasis in original.) As an initial matter, the Office Action appears to overlook claim 36’s recitation that the purchase amount **corresponds** to the sales price amount less the promotion amount. Thus, the purchase amount may equal the sales price amount less the promotion amount, but does not necessarily have to equal the sales price amount less the promotion amount, as a correspondence may include but does not necessarily require equality. Applicants also respectfully traverse the Office Action’s implication that two different amounts are necessarily separately collected from the buyer in all aspects of the presently claimed subject matter, as well as the Office Action’s purported understanding that the transaction fee as claimed is required by itself to be more than the sales price amount less the promotion amount, and that it is “unclear if Applicant intended to claim that the total purchase amount, which includes the transaction fee, is more than the sale price less the promotion amount or the transaction fee by itself is more than the sales price less the promotion (more than the purchase amount).” Nevertheless, claim 38 is amended by the present response to recite “wherein a first amount is defined by the sales price less the promotion amount, and the purchase amount collected from the buyer equals the first amount plus the service fee.” Thus, the service fee is collected from the buyer (see claim 37 from which claim 38 depends) by charging a purchase amount that equals the first amount (the sales price less the promotion amount) plus the service fee. In this particular instance, the purchase amount equals the first amount (i.e., the sales price less the promotion amount) plus the service fee, so the purchase amount still corresponds to the sales price less the promotion amount, as recited by claim 36. Applicants respectfully submit that claim 38 is allowable under 35 U.S.C. 112.

Rejection of Claim 34-39 as being anticipated by Meyer

Claim 34 stands rejected under 35 U.S.C. §102(e) as being anticipated by Meyer *et al.*, U.S. Patent No. 6,915,271 (hereinafter “Meyer”). Claim 34 has been amended for clarification purposes to make explicit what was previously implicit, namely, to recite “providing a portal containing a plurality of promotions wherein a buyer can search for a promotion from the first party associated with the item for sale, wherein the portal is provided after the offering by a second system of a second party of the item for sale online at the sales price...”

The Office Action maintains its assertion that Meyer discloses “offering, by a second system of a second party, an item for sale online at a sales price amount” at Figs. 31-35 and 39:55-41:22. (See Office Action at p. 3.) Applicants have previously addressed this portion of Meyer. (See, e.g., Response filed January 16, 2009.) For example, as indicated in the previous submissions, Figs. 31-35 illustrate incentives, not sales price amounts. Again, in the relied upon “buy now” example, any purported portal is provided before, and not after, any purported offering, by a second system of a second party, an item for sale online at a sales price amount.

As pointed out previously, in the presently claimed subject matter, the buyer can search for promotions associated with the item for sale, where the item has previously been offered for sale at a sales price amount (i.e., “after the offering...”.) In contrast, the “buy now” feature of Meyer is presented as part of the incentive, and therefore the incentive of Meyer cannot be the providing of a portal “**after** the offering...”

Responding to Applicants’ previous submission, the Office Action replies as follows:

Regarding claim 34 applicant argues that the Meyer’s use of “buy now” option as part of a displayed incentive is different from “offering, by a second system of a second party, an item for sale online at a sale price amount” ... because, in relied upon “buy now”, example any purported portal is provided before, and not after, any purported offering, by a second system of a second party, an item for sale online at a sales price amount. Examiner would like to point out that the claim does not recite providing the portal after the user’s selection of the item for sale or after user indication of purchase. The claim merely recites offering the item for sale and providing the portal after the offering which is does not indicate if the offering and portal are provide to a user or displayed to a user one after another. As claimed the purchase request can be requested form the offering of the item for sale or from the portal. Applicant also argues that in the presently claimed subject matter the buyer can search for promotions associated with the item for

sale, where the item for sale is offered for sale at a sales price amount. Examiner would like to point out that in Meyer the item are also previously offered for sale at the merchant's website or store, before the promotion is issued by the merchants and provided to the promotional website. Applicant asserts to the extent Meyer, *arguendo*, would offer an item for sale at a sales-price amount, that amount would not appear to be known-or seen until after the incentive were located and the "buy now" feature selected. Examiner would like to point out that the claim recites offering an item for sale online at a sales prices. As claimed there is no clear indication that the item is offered online nor is it indicated that the price is displayed or is known to the buyer. The claim just recites that a second system offers an item (for sale online at a sales price). Meyer teaches that once the user clicks on the "Buy Now" button, to purchase the product with the incentive, the user is directed to a web site for purchasing the product (which is offered for sale from the merchant) from the same site or at a different Web location or corresponding to an offline merchant that does not have a web site (see col. 40 line 63 to col. 41 line 21).

(Office Action at p. 6-7.) Applicants respectfully traverse these assertions as providing a sufficient basis for a finding of anticipation. First, whether or not the claim recites "providing the portal after the user's selection of the item for sale or after user indication of purchase" is irrelevant. Regardless of whether or not the claim recites that, the cited art still fails to teach "providing a portal containing a plurality of promotions wherein a buyer can search for a promotion from the first party associated with the item for sale, wherein the portal is provided after the offering by a second system of a second party of the item for sale online at the sales price, the promotion having a promotion amount" as claimed. Claim 34 clearly requires the provision of the portal described as claimed **after** the offering for sale by a second system of the second party. For the reasons discussed previously, the "Buy Now" feature of Meyer does not teach providing such a portal after the offering as claimed.

Further still, the Office Action maintains its rejection based on the assertion that "As claimed there is no clear indication that the item is offered online nor is it indicated that the price is displayed or is known to the buyer." The plain language expressly recited by the claim directly contradicts this assertion by the Office Action. Claim 34 expressly recites "offering, by a second system of a second party, an item for sale **online at a sales price amount**." Thus, the item is expressly recited as offered for sale **online**. Further, claim 34 expressly recites that the

item is **offered** for sale online **at a sales price amount**. Applicants respectfully submit that a buyer by definition must know the sales price for the item to be **offered** for sale **at a sales price amount** as required by the plain language of claim 34. While claim 34 as previously submitted clearly indicated that the item was offered for sale online, and at a sales price amount displayed or known to the buyer, claim 34 is amended by the present response to clarify even yet further still that “wherein the portal is provided after the offering by a second system of a second party of the item for sale online at the sales price...” Applicants respectfully submit it is beyond reasonable argument that the plain language of claim 34 expressly requires the offering for sale online, and at a sales price. Further, the Office Action’s purported previous offers for sale “at the merchant’s website or store” cannot teach the presently claimed subject matter, because such purported “offers” would not be online (in the case of the store assertion), and, in any event, would not teach wherein a buyer can search for a promotion from the first party **associated** with the item offered for sale as also required by the claim – such offers would not be associated with the promotions and therefore cannot teach the offering for sale arranged as required by claim 34. (See MPEP §2131.)

Applicants now turn to claim 35, which is amended by the present response to recite, *inter alia*, “offering, by a second system of a second party, an item for sale online at a sales price amount, the item for sale having associated with it, by the second system of a second party, a promotion from the first party, the promotion having a promotion amount.” Thus, claim 35 explicitly recites that the second system associates a promotion from the first party with the item for sale, that the online purchase request is received by the second system (of the second party), that the purchase amount is collected by the second system (of the second party), and that shipment is caused by the second party.

In responding to the Applicants’ previous submission, the Office Action states as follows:

Regarding claim 35, applicant argues that the cited portion of Meyer does not teach the same party/system receiving the online purchase request from a buyer, and responding by collecting a purchase amount from the buyer, and causing shipment (by the same party), let alone “receiving, by the second system, an online purchase request from a buyer for the item for sale; responding, by the second system, to the online purchase request by collecting from the buyer a purchase amount corresponding to the sales price

amount less the promotion amount; and causing, by the second system, shipment by the second party of the item for sale to the customer” as claimed. Contrary to applicant’s argument Meyer teaches a new pop-up purchase screen is displayed which includes a hyperlinks to all the online merchants and the member is automatically transferred to the on store to purchase the goods or services (see col. 41 lines 7-40). Therefore, the online purchase request is received by the second system from the buyer directly or indirectly.

(Office Action at p. 7-8.) Applicants respectfully traverse this assertion, even more so in light of the amendment that clarifies “the item for sale **having associated with it, by the second system of a second party**, a promotion from the first party...” To the extent such “online merchants” reached by clicking on a hyperlink are relied on as the second party having a second system, such “online merchants” would not disclose an item for sale having promotions of the first party associated with it by the second system of a second party as claimed, as a system other than such an online merchant reached by a hyperlink as described by Meyer would have associated a promotion with the item for sale, assuming, *arguendo*, such an association is present. Thus, the purported online merchants cannot disclose the second system as claimed at least because they do not associate a promotion from the first party with the item for sale. For the above discussed reasons, as well as those discussed in previous submissions, Applicants respectfully submit claim 35 is allowable over Meyer.

Applicants now turn to independent claim 36 and claims 37-39 which depend therefrom. In responding to Applicants’ previous submission regarding these claims, the Office Action states as follows:

Regarding claims 36-39, claim 36 recites collecting transaction fee associated with online purchase. Applicant’s specification does not explicitly correlate the transaction fee to surcharge or service charge, therefore, the term “transaction fee” is interpreted more broadly than what applicant’s interpretation is. Claim 37 recites wherein the transaction fee is collected from the buyer and in claim 38 it was recited that the transaction fee is applied to reduce the promotion amount. If the term “transaction fee” is interpreted to mean surcharge or service charge paid by buyer (collected from buyer), the transaction fee or service fee does not reduce the promotional amount or sale amount, since it is an amount paid in addition to the purchase amount (sale amount

minus the promotional amount). However applicant by amending claim 38 to further define the term “transaction fee”, which is a fee collected from the buyer by charging an amount more than the sales price less than the promotion amount, it means that an additional amount is charged. However it does not mean a surcharge or service charge. It can also meant that sales tax is applied, in response to the purchase request. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). However, Applicant’s specification does not provide correlation between the “transaction fee” and “surcharge fee” or “service fee”.

(Office Action at p. 8-9.) As an initial matter, as also pointed previously with respect to the previous Office Action, the present Office Action again wholly fails to address claim 39’s requirement that “wherein the transaction fee is collected **from the first party**.” Again, the Office Action asserts that claim 39 is anticipated because Meyer purportedly teaches “wherein the transaction fee is collected from the buyer.” (See Office Action at p. 6.) Such an assertion cannot support a *prima facie* case of anticipation at least because even if it is accepted, *arguendo*, it is still utterly silent with respect to collection of a fee **from the first party**, as the first party and the buyer are not the same.

With respect to independent claim 36 (and its dependent claims), Applicants respectfully traverse the assertions of the Office Action. For example, the Office Action does not appear to address the most recently submitted claim 38, as it discusses language not found in that claim as submitted by the January 16, 2009 Response. Applicants further respectfully traverse the Office Action’s unsupported assertion, for example, that a transaction fee as claimed “can also mean that sales tax is applied,” or that an explicit correlation to a surcharge or service fee is necessarily required for the term “transaction fee” to be understood. In any event, Applicant has amended claim 36 to recite “a service charge.” Applicants respectfully submit that such a service charge as claimed is not anticipated by any purported “sales tax.” For the above reasons, as well as those submitted previously, Applicants respectfully submit that claims 36-39 are allowable over Meyer.

Conclusion

In general, the Office Action makes various statements regarding the pending claims and the cited reference that are now moot in light of the above. Thus, Applicants will not address such statements at the present time. However, Applicants expressly reserve the right to challenge such statements in the future should the need arise (e.g., if such statements should become relevant by appearing in a rejection of any current or future claim).

Applicants believe that the pending claims are allowable. Should the Examiner disagree or have any questions regarding this submission, Applicants invite the Examiner to telephone the undersigned at (312) 775-8000.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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